

SANTARELLI, SMITH & CARROCCIO

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

A. THOMAS CARROCCIO  
DONALD E. SANTARELLI, P.C.  
EDWARD J. SMITH, JR.  
STEPHEN V. WEHNER  
RICHARD O. WOLF

1155 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-4306

OFFICE

TELEPHONE  
(202) 466-6800

TELECOPY  
(202) 463-0969

OF COUNSEL  
LANGHORNE M. BOND  
RICHARD E. HILL

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May 26, 1992

MAY 26 1992

Federal Communications Commission  
Office of the Secretary

Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Comments of Household International  
CC Docket No. 92-90

Dear Ms. Searcy:

Transmitted herewith, on behalf of Household International, is an original and nine (9) copies of its Comments in the Commission's TPCA proceeding, CC Docket No. 92-90.

Should there be any questions regarding this matter, please communicate with the undersigned member of this firm.

Sincerely,

SANTARELLI, SMITH & CARROCCIO

By:

  
A. Thomas Carroccio

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of  
  
The Telephone Consumer  
Protection Act of 1991

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CC Docket No. 92-90

To: The Commission

COMMENTS OF HOUSEHOLD INTERNATIONAL

Toni A. Bellissimo, Manager  
Federal Government Relations  
HOUSEHOLD INTERNATIONAL  
1000 Connecticut Avenue, N.W.  
Suite 507  
Washington, D.C. 20036  
202/466-3561

A. Thomas Carroccio  
Edward J. Smith, Jr.  
SANTARELLI, SMITH & CARROCCIO  
1155 Connecticut Avenue, N.W.  
Ninth Floor  
Washington, D.C. 20036  
202/466-6800

May 26, 1992

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### SUMMARY

Household International ("Household"), in response to the NPRM initiating this proceeding, supports the adoption of 47 C.F.R. § 64.1100, as proposed. However, Household believes it is necessary and appropriate for the Commission to clarify both the basis for, and the extent of, certain exemptions set forth in the rule. Specifically, Household requests that the Commission make it clear that "debt collection calls" are exempt from certain provisions of the proposed rule for two reasons: (i) the existence of a business relationship between the creditor initiating the call and the debtor to whom the call is directed; and (ii) that the entry into certain agreements, including loan agreements, encompasses all parties' express consent to such contact, including telephone contact, as may be necessary to achieve full performance of the agreements.

Household believes there is no need for the Commission to adopt any further restrictions on telephone solicitation of residential subscribers, because the scope of the proposed rule effectively precludes the types of solicitation which consumers find annoying or invasive of their privacy. However, in the event the Commission determines some further restriction is necessary, Household believes that the only efficient, effective and non-intrusive means of further protecting residential telephone subscribers is through the use of company specific do-not-call lists.

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MAY 26 1992

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C.

In the Matter of )  
 )  
The Telephone Consumer Protection Act of 1991 ) CC Docket No. 92-90  
 )  
To: The Commission

COMMENTS OF HOUSEHOLD INTERNATIONAL

HOUSEHOLD INTERNATIONAL (hereinafter "Household"), by its attorneys, hereby submits comments in response to the Commission's Notice of Proposed Rulemaking (hereinafter "NPRM") initiating this proceeding.<sup>1</sup> For its comments, Household states as follows:

Procedural Status

1. The Telephone Consumer Protection Act of 1991 (hereinafter "TCPA") was enacted on December 20, 1991. TCPA amended the Communications Act of 1934 by adding new Section 227 thereto.<sup>2</sup>

2. TCPA directed, inter alia, that the Commission, within 120 days of TCPA's enactment, initiate a rulemaking proceeding "concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object."<sup>3</sup> The Commission timely initiated this proceeding in

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<sup>1</sup> Notice of Proposed Rulemaking in the Matter of the Telephone Consumer Protection Act of 1991, FCC 92-176, released April 17, 1992.

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> 47 U.S.C. § 227(c)(1).

response to that directive. In this proceeding, the Commission also "proposes implementing regulations, and tentatively defines the contours of statutorily permissible exemptions to the prohibitions of the [TCPA]."4

3. By the NPRM, the Commission seeks comments regarding its implementation of TCPA. As this day is the date specified for the submission of comments responsive to the NPRM,5 these comments by Household are timely filed with the Commission.

#### Household's Interest in This Proceeding

4. Household, through its subsidiaries,6 offers American consumers and American businesses a wide range of financial services, including: consumer loans, credit cards (national and private label), life insurance, mortgage lending, leasing, securities brokerage, certificates of deposit, IRA's, real estate brokerage, and checking, savings and money market accounts. Household has over 10,000 employees at various domestic locations, and markets its insurance products through approximately 9,100 independent agents throughout the country. Household provides its

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<sup>4</sup> NPRM, at para. 1.

<sup>5</sup> NPRM, at para. 38.

<sup>6</sup> A listing of Household's U.S. subsidiaries is set forth as Exhibit "A" to these comments. In addition, Household, upon any request by the Commission or the Staff, will make available copies of its annual report for 1991. Household, through its foreign subsidiaries, also offers financial services in Australia, Canada and the United Kingdom. The activities of those foreign subsidiaries, however, are not relevant to this proceeding.

customers some form of financial services in each of the United States.

5. Household presently utilizes interstate telephone facilities in connection with its marketing, customer service, and debt collection activities. Although Household, as a matter of good business, has refrained from the abusive telephone practices targeted by TCPA, both the restrictions imposed by TCPA and the regulations proposed or under consideration by the Commission will inevitably impact Household's future utilization of the interstate telephone system. Accordingly, Household's interest in this proceeding is apparent.

#### Business Relationship Exemptions

6. The Commission has wisely proposed expanding TCPA's exemptions for an "established business relationship"<sup>7</sup> so as to include a "prior or current business relationship"<sup>8</sup> within those exemptions. In doing so, the Commission seeks comment on "what qualifies as a 'business relationship'" and how the terms "prior" and "current" should be distinguished.<sup>9</sup>

7. Household concurs with the Commission's determination that the existence of a "business relationship" cannot be "based solely on a prior solicitation from the caller to a prospective customer." In fact, Household believes that the only valid

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<sup>7</sup> 47 U.S.C. § 227(a)(3)(B).

<sup>8</sup> 47 C.F.R. § 64.1100(c)(3), as proposed in the NPRM.

<sup>9</sup> NPRM, at para. 14.

criterion for determining the existence of a "business relationship" is an actual transaction between the parties.<sup>10</sup>

8. The existence of a "current" business relationship is easily determined by reference to an on-going transaction or an open account. By contrast, the extent to which a caller may rely on a "prior" business relationship can be determined only by considering several factors, including the nature of the previous relationship, the elapsed time since the previous relationship was on-going, and the relationship, if any, between the product involved in the previous relationship and the product which is the subject of a telephone call. The Commission should not attempt to set strict parameters regarding "prior business relationships," but, instead, should require a caller seeking to rely upon such a relationship to demonstrate, if challenged, a reasonable basis for its reliance.

9. In its order in this proceeding, the Commission should recognize that a company may initiate a call to a party in reliance upon a prior or existing business relationship between the called party and a company affiliated with the calling party, provided that the products offered by both companies are reasonably related. For example, one subsidiary of Household should be able to initiate a call to an individual in reliance upon that individual's on-going or recent relationship with another subsidiary of Household. In

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<sup>10</sup> It should be noted that, even in the absence of an actual transaction, parties may request future contacts from each other. In such cases, however, the requests for future contacts would constitute "prior express consent" obviating the need to base subsequent contacts on "business relationships."



such a situation, because the various financial products offered by Household's subsidiaries are reasonably interrelated, and because the called party has a business relationship with an affiliated company, the "business relationship" exemption should apply to the telephone contact.

### Debt Collection Practices

10. While fully concurring with the Commission's decision to include debt collection calls within the "business relationship" exemption of proposed rule Section 64.1100(c)(3), Household urges the Commission to also declare such calls to fall within the scope of the "prior express consent" exceptions set forth throughout proposed rule Section 64.1100. It is submitted that one's entry into certain business relationships, including loan agreements, carries with it a clear expectation of, and therefore an express consent to, continuing communications regarding the status of those relationships. It is especially appropriate to construe "prior express consent" where the business relationship involves the parties' provision of contact telephone numbers to each other. In its order adopting the rules implementing TCPA, the Commission should acknowledge that "prior express consent" may be construed from the existence of certain current business relationships, including loan agreements.

11. In the NPRM, the Commission acknowledged that parties engaged in debt collection were concerned about a conflict between the identification requirements of 47 U.S.C. § 227(d)(3)(A) and the

provisions of the Fair Debt Collection Practices Act ("FDCPA"), specifically 15 U.S.C. § 1692c.<sup>11</sup> In response, the Commission simply indicated that "debt collectors should be able to draft identification messages that comply with both statutes."<sup>12</sup> Household shares the financial industry's concern regarding 15 U.S.C. § 1692c, but is even more concerned about the potential for conflict with the provisions of 15 U.S.C. § 1692b(1).<sup>13</sup>

12. If a debt collection call is placed to a number provided by a debtor, Household believes a creditor, or its collection agent, must reasonably determine that the individual receiving the call is, in fact, the debtor before disclosing the identity of the creditor. Household, and several others engaged in debt collection activity, use auto dialers operating in a predictive mode to contact debtors. The messages associated with such calls are intended for delivery by live operators, but, in instances where a

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<sup>11</sup> 15 U.S.C. § 1692c(b) prohibits communication, "in connection with the collection of any debt, with any person other than the consumer...."

<sup>12</sup> NPRM, at fn. 23.

<sup>13</sup> 15 U.S.C. § 1692b provides as follows:

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall -

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer (emphasis added).

live operator is not immediately available to speak with an answering party, Household utilizes a short, recorded message requesting that the answering party remain on the line.<sup>14</sup> <sup>15</sup> Household does not believe the FDCPA allows its employees, or its agents, to identify Household in the stand-by message because the identity of the answering party has not yet been determined by a live operator.

13. Household requests that, to solve these conflicts, the Commission add a proviso exempting debt collection calls to proposed rule Section 64.1100(d)(1). Of course, any such proviso could require subsequent identification of the caller, in a manner consistent with FDCPA, during the course of the call.

#### Uses of Auto Dialers

14. Throughout proposed Section 64.1100 of its Rules, the Commission utilizes the term "automatic telephone dialing system" without further definition, presumably because the Commission intends the TCPA definition of that term to apply.<sup>16</sup> Household

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<sup>14</sup> The actual message utilized by Household is "Please hold for an important message."

<sup>15</sup> All auto dialer telephone calls initiated by Household are terminated immediately upon the answering party's hanging-up of its telephone receiver.

<sup>16</sup> 47 U.S.C. § 227(a)(1) sets forth the following definition:

The term 'automatic dialing system' means equipment which has the capacity -

(A) to store or produce telephone numbers to be called using a random or sequential number generator; and

supports the Commission's use of the discretion granted it by TCPA to effectively modify that definition by focussing on the actual mode of use of an auto dialer rather than the technical capabilities of auto dialers, generally. As recognized by the Commission, the auto dialer abuse TCPA seeks to restrict arises when an auto dialer is used to place telephone calls on a random or sequential basis, especially when the telephone call's message is delivered by artificial or pre-recorded voice.

15. Household, like other responsible companies engaged in telemarketing activities, only utilizes auto dialers in a "predictive" mode, whereby telephone calls are directed to specific telephone numbers utilized by individuals who either have business relationships with Household, have been identified as prospects for Household products, or have given Household an indication of interest in receiving information from Household. Such auto dialer use should not be construed to constitute either an invasion of privacy or an annoyance, irregardless of whether the resulting telephone message is delivered by a live operator, a pre-recorded or artificial voice, or any combination thereof.

16. Although the Commission, in proposed rule Section 64.1100(c), sets forth exemptions for certain legitimate uses of auto dialers, the limitation of those exemptions to proposed Section 64.1100(a)(2) unnecessarily exposes legitimate auto dialer users to liability under other provisions of Section 64.1100. For

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(B) to dial such numbers.

example, Section 64.1100(a)(1)(iii) prohibits auto dialer calls, without the prior express consent of the called party, "to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or any service for which the called party is charged for the call." Unless, as proposed in Paragraph 10 above, the caller is construed to obtain "prior express consent" from certain relationships (e.g., borrower-lender), a collection call to a debtor who has provided his lender only with telephone numbers of a character specified in Section 64.1100(a)(1)(iii) would result in a violation of the TCPA and the Commission's Rules.<sup>17</sup> Similarly, a violation of proposed rule Section 64.1100(a)(4) may occur through the inadvertent (or coincidental), simultaneous auto dialing of legitimately obtained numbers for two telephone lines of a multi-line business, even though the auto dialer is working in a predictive mode. The prohibitions of both 47 U.S.C. § 227(b)(1)(D) and proposed rule Section 64.1100(a)(4) were designed to prevent the lock-up of a business' sequentially numbered incoming telephone lines by the random auto dialing of sequential telephone numbers. Two calls coincidentally directed to two separate individuals within a multi-line business establishment at the same time should not cause a

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<sup>17</sup> The potential for such inadvertent violations will increase substantially upon the implementation of "700" type services where a single telephone number is utilized by the subscriber to receive all calls directed to him, irregardless of whether he is using his business line, residential line, or cellular or SMR unit.

legitimate caller to be in technical violation of TCPA or the Commission's Rules.

### Telephone Solicitation to Residential Subscribers

17. As noted above, 47 U.S.C. § 227(c) required the Commission to initiate this proceeding to consider the need to protect residential telephone subscribers from telephone solicitations to which they object.<sup>18</sup> The Commission also must determine what categories of telephone solicitations should be restricted in order to protect the privacy rights of residential telephone subscribers, and must develop appropriate methods and procedures, if necessary, to assure such protection.

18. As a starting point, the Commission should recognize that the exceptions to the definition of "telephone solicitation," if interpreted and applied as previously suggested by Household, will allow ample opportunity for legitimate telemarketing activity. At the same time, the provisions of TCPA, as implemented by the Commission's proposed rule, will severely restrict, if not totally

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<sup>18</sup> 47 U.S.C. § 227(a)(3) defines "telephone solicitation" as follows:

The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

negate, any continued use of the telemarketing practices which presently invade the privacy of residential telephone subscribers. Both the Congress, in enacting TCPA, and the Commission, in proposing the addition of Section 64.1100 to its Rules, have addressed, and have made provisions to terminate, the abuses with which this proceeding is concerned. Accordingly, Household believes there is no reason to impose further costly and cumbersome procedures on telemarketing activities.

19. Household recognizes that, despite the foregoing paragraph, the Commission may determine that some additional methods or procedures are necessary to protect the privacy of residential telephone subscribers. In fact, the Commission, in the NPRM, stated that it would consider five regulatory alternatives for the restriction of telephone solicitation. The five regulatory alternatives are as follows:

- (a) Databases (national or regional);
- (b) Network technologies;
- (c) Special directory markings;
- (d) Do not call lists (industry-based or company specific); and
- (e) Time of day restrictions.

It is Household's considered opinion that four of the five alternatives are either unworkable, ineffective or prohibitively costly.

20. The cost of establishing databases, either on a national or regional basis, would be prohibitive.<sup>19</sup> Household estimates that the cost of establishing a national database would be at least \$50 million, and may reach up to \$100 million. In addition to the cost of establishing the national database, each company required to utilize such a database in connection with its telemarketing activities would be required to make additional expenditures for its own compliance equipment and procedures. All such costs will inevitably be passed on to the consumer in the form of higher prices for goods and services. Small businesses, however, may not even have a sufficient customer base over which to reasonably spread database costs, and therefore, may be totally precluded from further telemarketing activity. Any such utilization of databases also will impair the ability of companies to promptly respond to consumer objections regarding telephone solicitations. Household estimates that consumer requests for exclusion from telephone solicitations will be delayed at the national database level for between six months and one year, depending on whether updated database information is distributed on a quarterly or semi-annual basis. After distribution of database updates, additional time must be afforded for the inclusion of national database information in the files of each company utilizing the database.

21. Network technologies cannot be expected to provide the consumer protection sought by the TCPA. There simply are not any

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<sup>19</sup> The Commission has made it abundantly clear that no governmental monies will be available for database establishment or operation.



presently available, or immediately foreseeable, network technologies which would allow for the blocking of telephone solicitations, especially on a selective basis. The idea that all telemarketing activities utilize only telephone lines with specified prefixes or exchanges is not realistic. Given the demands being placed on the present telephone numbering plan by new technologies and services, it would appear that it would be difficult, if not impossible, to identify sufficient exchange prefixes on a national basis to accommodate the present volume of telemarketing activity. In addition, such a scheme would require businesses to dedicate one or more lines solely to telemarketing activities. This requirement would necessitate expenditures for additional telephone lines, and would thereby impose a significant, but unnecessary, financial burden on all businesses, but most onerously on small businesses. The Commission should reject this option as technologically unfeasible and financially burdensome.

22. The special directory markings option must be rejected as extremely inefficient. Residential telephone directories are compiled and maintained on a local basis. The local nature of the directories, and the multiplicity of local directories, make the use of special directory markings cumbersome, at best. National companies would be compelled to integrate information from hundreds of local directories into their telemarketing databases in order to attain compliance. A directory marking system would deprive telephone subscribers of any flexibility to block only those solicitations they find annoying or invasive, and require them to

block desired solicitations along with undesirable ones. The Commission also should keep in mind that one of TCPA's primary objectives is the protection of residential telephone subscribers' privacy. Any marking in a widely distributed directory will call attention to the marked listing, and thereby make that subscriber a target for crank calls. Surely, it would be an invasion of a subscriber's privacy to have his choice regarding telephone solicitations made generally known in his community. The burden of compiling information from multiple directories, and the accentuation of particular telephone subscribers through directory markings, make it inappropriate to rely on such procedures for the protection of consumer privacy interests.

23. Household does not believe time of day restrictions will provide consumers with any effective protection against unwanted telephone solicitations. In order to be effective, such solicitations must reach consumers at a time when they are available, and more importantly, amenable to solicitation. It is hard to imagine that the Commission could develop reasonable time of day requirements which would be any more restrictive than the public relations considerations under which businesses now operate.

24. Household recommends that, in the event the Commission determines an additional method for restricting telephone solicitation must be developed and implemented, it adopt company specific do-not-call lists as that method. Such lists are efficient in that they need only be as extensive as a company's own telemarketing activities require. Therefore, each company can

control its own telemarketing budget, including compliance costs, without regard to such fixed costs as would be unilaterally imposed by a universal system, such as a national database. In addition, most responsible companies presently engaged in telemarketing activities already maintain such lists as a matter of good public relations. Household suggests, therefore, that company specific lists would provide immediate effectiveness at the lowest possible direct cost to the company, which low cost will result in minimal pricing pass throughs to consumers. It also is clear that company specific do-not-call lists will provide residential telephone subscribers with two important benefits, flexibility and privacy. A residential subscriber will be able to specifically eliminate those solicitations he finds annoying or invasive while maintaining the ability to receive solicitations in which he is interested. As company specific do-not-call lists will not be circulated, they will allow residential subscribers protection against unwanted solicitations without placing personal information in widely available databases. In sum, company specific do-not-call lists would efficiently provide the consumer with maximum protection without sacrificing either flexibility or privacy.

25. Household must caution the Commission that the benefits to be derived from company specific do-not-call lists are not applicable to industry-based do-not-call lists. For one reason, it will be extremely difficult, and probably impossible, to define industries, and to pigeon-hole every company, especially a broadly diversified company, into one specific industry. Also, such

industry lists would suffer from the same delays in compilation and distribution as databases. Further, the cost of establishment and operation of such industry lists would impose disproportionate economic burdens on the smaller members of an industry. Finally, member companies would be extremely reluctant to divulge the identities of their business prospects through a list distributed to their direct competitors.

26. For the reasons cited in Paragraphs 17 through 25 above, Household recommends that the Commission not mandate any methods for restricting telephone solicitations to residential subscribers, but, instead, rely upon the comprehensive provisions currently mandated by TCPA. If, despite the many reasons to the contrary, the Commission determines an additional method of restricting such telephone solicitations is warranted, Household strongly urges that the designated method be company specific do-not-call lists.

#### CONCLUSION

Household respectfully submits that the Commission should adopt 47 C.F.R. § 64.1100, as proposed in the NPRM, but, in its order adopting that rule, should clarify, in a manner consistent with Household's above suggestions, the basis for, and the extent of, the exemptions set forth in the rule. Household also submits that the Commission either should determine that there is no need for further restrictions on telephone solicitations of residential subscribers, or, in the event the Commission makes a contrary determination, that the privacy of residential telephone

subscribers can be best protected through the use of company specific do-not-call lists.

Respectfully submitted,  
HOUSEHOLD INTERNATIONAL

By: Toni A. Bellissimo  
Toni A. Bellissimo, Manager  
Federal Government Relations  
HOUSEHOLD INTERNATIONAL  
1000 Connecticut Avenue, N.W.  
Suite 507  
Washington, D.C. 20036  
202/466-3561

By: A. Thomas Carroccio  
A. Thomas Carroccio  
Edward J. Smith, Jr.  
SANTARELLI, SMITH & CARROCCIO  
1155 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
202/466-6800

May 26, 1992

**EXHIBIT A**

HOUSEHOLD INTERNATIONAL  
EXHIBIT "A"

DOMESTIC SUBSIDIARIES OF HOUSEHOLD INTERNATIONAL

Household Finance Corporation

Household Retail Services

Household Bank, F. S. B.

Household Mortgage Services

Land of Lincoln Realty

Household Credit Services (Household Bank, N. A.)

Household Commercial Financial Services, Inc.

Alexander Hamilton Life Insurance Company of America

Household Business Funding

Household Financial Services

Hamilton Investments